



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Meridian Corporation--Award of Costs
File: B-228468.2
Date: June 14, 1988

DIGEST

Where agency unreasonably induced the protester to submit proposal based on overstated minimum needs and where agency improperly awarded the contract on the basis of initial offers to other than the low offeror, the protester is entitled to its costs of filing and pursuing the protest, including attorneys' fees, and proposal preparation costs.

DECISION

By this decision, we award Meridian Corporation its costs of filing and pursuing its protest including attorneys' fees and its proposal preparation costs.

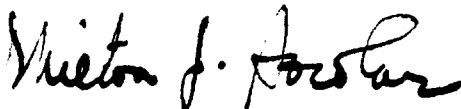
Meridian protested to our Office the award of a contract to Reynolds, Smith and Hills under request for proposals (RFP) No. DAAC69-87-R-0125 issued by the New Cumberland Army Depot. The RFP sought proposals for developing and conducting energy awareness seminars at various Army installations, and Meridian complained that the agency had made an award inconsistent with the evaluation and source selection scheme set forth in the RFP. Specifically, it appeared that although Meridian had submitted the highest scored technical proposal and although the RFP provided that technical factors were nine times more important than cost for award, the agency had made award to a lower scored offeror based on cost.

We sustained the protest because we found that the agency had not presented any rational explanation to justify its decision to award to a lower rated technically, lower cost proposal given Meridian's technical superiority and the weight to be given technical factors. Meridian Corporation, B-228468, Feb. 3, 1988, 67 Comp. Gen. ____, 88-1 CPD ¶ 108.

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We found that the agency's determination considered only two subline items that were a minor component of costs, which in turn constituted only 10 percent of evaluated points and that the agency failed to indicate why the costs proposed by Meridian were excessive considering the apparent technical superiority of Meridian's proposal. We also found that the agency had no basis under the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2305(b)(4)(A)(ii) (Supp. III 1985), to make an award on initial offers in these circumstances since there was a lower technically acceptable offeror than the awardee. We recommended that the agency hold discussions with all offerors within the competitive range to allow for submission of revised proposals in satisfaction of the agency's requirements and that Reynolds' contract be terminated for the convenience of the government if it were not the successful offeror at the conclusion of discussions.

The agency informs us that it has instead chosen to cancel the solicitation and to reissue it at a later date. We understand that the agency intends to change the evaluation criteria in the future solicitation to increase the weight of cost, while reducing the weight of technical factors. The original RFP placed virtually total emphasis on technical factors and Meridian was induced to propose on this basis, reasonably emphasizing technical concerns instead of cost. The future solicitation will be a new competition requiring completely restructured proposals. Since Meridian was induced unreasonably to compete against an overstatement of the government's needs, and we also found a violation of CICA, Meridian is entitled to recover its costs of filing and pursuing the protest and proposal preparation costs. See 4 C.F.R. §§ 21.6(d), (e) (1987); Thorn EMI Technology Inc., B-228120, Jan. 15, 1988, 88-1 CPD ¶ 36. Accordingly, by separate letter of today we are advising the Secretary of the Army of our determination. Meridian should submit its claim for such costs directly to the Army. 4 C.F.R. § 21.6(f).

for 
Comptroller General
of the United States